

February 6, 2018

Mr. Devin M. Leary  
Human & Rohde, Inc.  
512 Virginia Avenue  
Towson, Maryland 21286

Re: 1721 Broadway Road Property  
Forest Conservation Variance  
Tracking #02-17-2633

Dear Mr. Leary:

A request for a variance from Baltimore County's Forest Conservation Law was originally received by this Department of Environmental Protection and Sustainability (EPS) on December 21, 2017. That request proposed to remove 40 of the 75 native specimen trees onsite. These specimen tree impacts are associated with development of a 10-lot, residential subdivision, including its stormwater management facilities on this 20.7-acre, RC-5 zoned property. It should be noted that 25 of the trees are in fair or better condition and that the remaining 15 trees are in poor condition. Of the trees to be impacted, all but three are within forest. Supplemental information including five alternate designs was subsequently provided as a result of your meeting with EPS staff and the engineer.

On January 31, 2018, an updated fifth alternate design and a modified mitigation proposal were provided, which identified an additional isolated specimen tree to be impacted as being in fair or better condition. As a result, proposed specimen tree mitigation fee-in-lieu for the isolated trees increases to \$3,112 whereas the impacts for the specimen trees within the forest will be mitigated in accordance with the outcome of an EPS-approved forest conservation worksheet. It should further be noted that the fifth alternate retains five (5) additional specimen trees and conserves the highest quality and most contiguous forest tracts when compared to the Concept Plan and the fourth (initially preferred proposal) alternate. It should also be noted that 5 of the specimen trees and approximately 0.4 acres of forest considered impacted occur within proposed septic reserve areas and have to be considered cleared even though they may remain. Lastly, the latest development proposal conserves 5.3 acres of the 11.7 acres of onsite forest.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six criteria listed in Subsection 33-6-116 (d) and (e) that shall be used to

evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d) must be met, and all three of the criteria under Subsection 33-6-116 (e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The wide distribution and sheer number of specimen trees are beyond the petitioner's control. However, we also note that the property currently contains a large primary residence, a tenant dwelling, several outbuildings, and an in-ground pool. While the application of the law would provide a hardship, it does not deprive the petitioner of all use of the property and so this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. Rather than the general conditions in the neighborhood, the petitioner's plight is due largely to the wide distribution of the specimen trees across the site as well as the extent of good quality forest stands onsite. Therefore, we find that this criterion has been met.

The third criterion (Subsection 33-6-116 (d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The granting of this special variance to facilitate the proposed development will be in keeping with the rural residential RC-5 zoning character of the surrounding neighborhood, which is composed of residential dwellings of a similar density. Consequently, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116 (e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. This project, which straddles the ridgetop between the Gunpowder River and Jones Falls watersheds, will retain approximately 5.3 acres of forest in long-term protective easement, will provide for current ESD stormwater management, and is far removed from any intermittent or perennial streams, wetland, floodplain resources and their buffers. Therefore, we find that this criterion has been met.

The fifth criterion (Subsection 33-6-116 (e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance which is the result of actions taken by the petitioner. The request is based solely on the fact that the specimen trees are spread across the buildable area of the property. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Proposing to retain 35 specimen trees in 5.3 acres of protected Forest Conservation Easement, which exceeds the Forest Conservation threshold, as well as adequately mitigating impacts to specimen trees and forest on this ridgetop property would be consistent with the spirit and intent of the Forest Conservation Law. Therefore, we find that this criterion has been met by the variance request.

Based upon our review, this Department finds that the required criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. As proposed, permanent impacts to the three isolated specimen trees in fair or better condition shall be mitigated by payment of a fee-in-lieu of \$3,112 prior to issuance of any grading permits. Checks shall be made payable to Baltimore County. Additionally, the remaining and forest and specimen tree impacts shall be mitigated via 1.5 acres of forest retention in a pre-approved offsite bank per the outcome of the Forest Conservation Worksheet.
2. Specific protective measures to minimize impacts to those specimen trees and forests to remain shall be detailed on the final forest conservation plan to be approved by this Department prior to approval of any grading and sediment control plan. The sequence of operations on the grading and sediment control plan shall also reference implementation of those protective measures.
3. The limits of any Forest Conservation Easement shall be permanently posted at 100-foot intervals or at any turn with "Forest Conservation-Do Not Disturb" signs, which are available from private sign contractors (see enclosures). Permanent at-grade monuments shall be installed at each sign location. The signs and monuments shall be installed prior to issuance of any building permits for the development or by December 1, 2018, whichever comes first.
4. Prior to issuance of any Baltimore County grading permit, blaze orange high visibility construction fence shall be installed along the limit of disturbance wherever the limit of disturbance is within 50 feet of any remaining specimen tree or Forest Conservation Easement. The protective fence shall be illustrated on the plan view and mentioned in the sequence of operations on both the sediment control plan as well as an approved final Forest Conservation Plan.

Mr. Devin M. Leary  
1721 Broadway Road Property  
Forest Conservation Variance  
February 6, 2018  
Page 4

5. Details of the signs and protective fence installation as well as a forest conservation worksheet must be on the final forest conservation plan.
6. The following notes must appear on all subsequent plans for this project:
  - “A variance was granted on February 6, 2018 to Baltimore County’s Forest Conservation Law to allow impacts to the specimen trees onsite. Conditions were placed on this variance, including paying a fee-in-lieu into the Baltimore County Forest Conservation Fund and protecting the specimen trees to remain.”
  - “A special variance to Baltimore County’s Forest Conservation Law may be required for future removal of any specimen trees from this property.”

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the property owner and contract purchaser (if applicable) sign the statement on the next page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Michael S. Kulis at (410) 887-3980.

Sincerely yours,

David V. Lykens  
Deputy Director

DVL/msk

Enclosures (2)

c. (no encl) Marian Honeczy, Maryland DNR

Mr. Devin M. Leary  
1721 Broadway Road Property  
Forest Conservation Variance  
February 6, 2018  
Page 5

I/we agree to the above conditions to bring my/our property into compliance with  
Baltimore County's Forest Conservation Law.

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Property Owner's Signature

Date

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Printed Name

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Contract Purchaser's Signature

Date

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Printed Name